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STATE OF ALABAMA

SEP 12 1990

Honorable Jane L. Weeks
Executive Director
Alabama Indian Affairs Commission
669 South Lawrence Street
Montgomery, Alabama 36104

Indian Identification -
Racial Designation - Alabama
Driver's License

1. Roll cards issued by an Indian tribal government established by the Davis-Strong Act (Acts 1984, No. 84-257, p. 423, codified at §41-9-708, et seq., Code of Alabama 1975) as indicators of the issuee's Indian heritage are sufficient identification for the purpose of obtaining racial designation as "Indian" on an Alabama driver's license.

Dear Ms. Weeks:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Are roll cards, issued by an Indian tribal government established by the Davis-Strong Act, proof of an issuee's Indian identification for the purpose of obtaining the racial designation as "Indian" on an Alabama driver's license?

FACTS AND ANALYSIS

It is this office's opinion that roll cards issued by an Indian tribal government are proof of an issuee's Indian identification for the purpose of obtaining the racial designation "Indian" on an Alabama driver's license. The Davis-Strong Act established the Alabama Indian Affairs Commission (AIAC) and recognized seven Indian tribes, bands or groups which are represented by the Commission. These are as follows:

Cherokees of Northeast Alabama
Cherokees of Southeast Alabama
Echota Cherokees of Alabama
Ma Chis Lower Creek Indian Tribe
MOWA Band of Choctaws
Poarch Band of Creeks
Star Clan of Muscogee Creeks

The purpose of the AIAC has been set out in §41-9-709, as follows:

" . . . to deal fairly and effectively with Indian affairs; to bring local, state, federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of Alabama; to provide aid for Indians as needs demonstrate; to assist Indian communities in social and economic development; to promote recognition of the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to the American Indian; and to establish appropriate procedures to provide for legal recognition of any future Indian organization who desires state recognition."

As stated earlier, the Davis-Strong Act recognized seven tribal governments. Only one of these tribal governments is federally recognized--the Poarch Band of Creeks. Essentially,

this means that the Poarch Band is federally recognized as a sovereign dependent nation, i.e., a tribally administered community.¹

The remaining tribal governments are considered sovereign governments within the State only. Although not all of the aforementioned tribal governments are federally recognized, clearly they all represent the interests of the Indian people within the State of Alabama. As such, the tribal governments have a right, to the extent not otherwise provided for by state law, to regulate their own local affairs and membership. See 41 Am.Jur.2d §7, Indians (1968); 42 C.J.S. §11, Indians (1944). Thus, it has been stated that, in the absence of express legislation to the contrary, an Indian tribe has complete authority to determine all questions of its own membership. See 42 (C.J.S. Indians §11 (1944); 41 Am.Jur. 2d Indians §2 (1968). See also, Baciarelli v. C. B. Morton, 481 F.2d 610 (9th Cir. 1973).² The practice among the tribal governments in Alabama regarding membership involves submission of a lengthy genealogy chart to support one's claim to membership in the respective tribal government. Roll cards are issued to those who qualify, i.e., those who possess a certain Indian blood quantum. As Alabama law is silent on who is an "Indian," such roll cards are due great weight as proof of one's Indian heritage.

With respect to racial designation as "Indian" on an Alabama driver's license, once again Alabama law is silent as to what is required to qualify for a particular racial designation on a license. Given the absence of any written law or policy on this matter, it is this office's opinion that the above-noted roll cards shall be sufficient for purposes of obtaining the designation of "Indian" on an Alabama driver's license.

¹The MOWA Band of Choctaws has recently petitioned for Federal Recognition. See "Testimony before the Advisory Committee of U.S. Civil Rights," Jane Weeks, Executive Director, AIAC, June 23, 1988.

²It must be noted that the Secretary of the Interior has the authority to determine tribal membership for the purpose of distributing federal trust assets. See 25 U.S.C. §163 (1983). Thus, membership in a tribal government recognized by a State does not per se entitle one to a share of Indian funds or an allotment of Indian lands.

CONCLUSION

Roll cards, issued by an Indian tribal government established by the Davis-Strong Act, are entitled to great weight as proof of the issuee's Indian heritage and, thus, are sufficient identification for the purpose of obtaining racial designation as "Indian" on an Alabama driver's license.

I hope that this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
ATTORNEY GENERAL
BY-


STACEY S. HOUSTON
ASSISTANT ATTORNEY GENERAL

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